Supreme Court, U. S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-6249

GEORGS KRIKMANIS,
PETITIONER,

v.

VINCENT A. MANNERING,
Clerk and
RICHARD F. FELL,
Assistant Clerk,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION

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Opinions Below

The memoranda and orders of the United States Court of Appeals for the First Circuit are not reported and are set forth in the Appendix to this brief. The order and memo-

randum of the United States District Court is not reported and is set forth in the appendix to this brief.

Jurisdiction

The order of the Court of Appeals (*infra* pp. 8-9) was entered on January 26, 1972. The petition for writ of certiorari was filed on February 28, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Question Presented

Whether the Court of Appeals erred in denying the petitioner's motion for leave to appeal in forma pauperis and holding that the District Court's decision dismissing the petitioner's amended complaint was correct.

Statement

On July 1, 1970, Krikmanis, proceeding *pro se*, filed a complaint in the United States District Court for the District of Massachusetts seeking damages against the Clerk and Assistant Clerk of the West Roxbury Municipal Court for their alleged failure to properly prosecute a criminal complaint for which he had applied. The Federal complaint was dismissed by the Court on October 2, 1970, for failure to comply with Rule 8(a)(2) of the Federal Rules of Civil Procedure, and for failure to state a claim upon which relief can be granted, Rule 12(b)(6). Leave to file an amended complaint was granted by the Court on October 15, 1970. The amended complaint, filed March 8, 1971, was an action under 28 U.S.C. §1343 and 42 U.S.C. §§1981, 1983, and 1985(2)(3). Like the original complaint, the amended complaint asserted that the petitioner's constitutional rights had been violated by the failure of the de-

fendants to institute criminal proceedings against named and unnamed third persons.

The District Court dismissed the amended complaint for failure to state a claim upon which relief can be granted. The court held that the petitioner had failed to allege essential elements of a claim under 42 U.S.C. §1981 in that he did not allege that he was deprived of any right which, under similar circumstances, would have been accorded to a person of a different race. The court further concluded that the petitioner had failed to state any cause of action under sections 1983, and 1985(2) or (3) of 42 U.S.C. because the petitioner made no showing that the defendants purposefully intended to discriminate against him or that they acted with a purpose of depriving him of the equal protection of the laws as required by §1983; nor did the petitioner allege facts showing the existence, execution, furtherance or promotion of a conspiracy or any discriminatory purpose on the part of the defendants as required by §1985(2) and (3).

Petitioner's "Motion for New Trial and Relief from Order of Court" was treated as a motion for a rehearing of the defendants' motion to dismiss and was denied by the District Court on December 14, 1971. Petitioner's motion for leave to appeal in forma pauperis was denied by the Court on January 10, 1972. On January 19, 1972, the petitioner filed with the Court of Appeals a "motion for leave to appeal in forma pauperis on original record". This motion was denied by the Court on January 26, 1972, and petitioner's subsequent petition for rehearing was denied on February 16, 1972.

Argument

The petition presents no substantial question warranting further review by this Court. The decision of the District Court—which is supported by a carefully reasoned opinion—is correct.

The basis of the Court of Appeals' decision denying Petitioner leave to proceed in forma pauperis was that upon examination of the record, the Court could find "no coherent issues of substance in the amended complaint, which was dismissed by the court below." (*Infra*, p. 8) The question presented by the petition is thus narrowed to whether the amended complaint was properly dismissed, and on this point the District Court's Decision is clearly supported by the authorities cited in its memorandum (*infra* pp. 6-8).

Conclusion

The petition for writ of certiorari should be denied.

Respectfully submitted,

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March 1972

APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action
No. 70-853-M

GEORGS KRIKMANIS

v.

VINCENT A. MANNERING, Clerk, and
RICHARD F. FELL, Asst. Clerk, of
the Municipal Court of West Roxbury,
Massachusetts

ORDER

November 29, 1971

MURRAY, DISTRICT JUDGE

In accordance with the Court's Memorandum of this date, it is ORDERED that plaintiff's amended complaint be, and it hereby is, dismissed for failure to state a claim upon which relief can be granted.

By the Court,
(s) ROBERT J. SMITH, JR.
ROBERT J. SMITH, JR.
Deputy Clerk

(s) FRANK J. MURRAY
FRANK J. MURRAY
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action
No. 70-853-M

GEORGS KRIKMANIS,
Plaintiff,
v.
VINCENT A. MANNERING, Clerk, and
RICHARD F. FELL, Asst. Clerk, of
the Municipal Court of West Roxbury,
Massachusetts,
Defendants.

MEMORANDUM

MURRAY, D.J. In this action, plaintiff seeks damages against the Clerk and Assistant Clerk of the West Roxbury Municipal Court as a result of their alleged denial of his constitutional rights by "misusing the authority vested in their respective offices under the color of law". He grounds his claim on the assertion that he was obstructed by the defendants from prosecuting his criminal complaint against certain named and unnamed third persons after he presented it to the West Roxbury Municipal Court. Plaintiff's action is one under 28 U.S.C. § 1343 and 42 U.S.C. §§ 1981, 1983, 1985(2)(3). Plaintiff is proceeding *pro se*, and for that reason the court will construe his pleadings liberally.

The case came on to be heard on defendants' motion to dismiss plaintiff's amended complaint on the ground, *inter alia*, that it fails to state a claim upon which relief can be granted.[1] For the reasons which follow, the motion is granted.

[1] Plaintiff's original complaint in this action was dismissed by the court on October 2, 1970 for failure to comply with Fed. R. Civ. P. 8(a)(2), and for failure to state a claim upon which relief can be granted, Rule 12(b)(6).

Plaintiff fails to allege essential elements of a claim under section 1981.[2] This has been held to mean that the statute is intended to provide for equality of rights as between persons of different races. *Agnew* v. *City of Compton*, 239 F.2d 226 (9th Cir. 1957), *cert. denied*, 353 U.S. 959 (1957). Nowhere in the amended complaint does plaintiff allege that he was deprived of any right which, under similar circumstances, would have been accorded to a person of a different race.

Nor has the plaintiff stated a cause of action under section 1983. Even if it be assumed that he has a constitutionally protected right to commence a state criminal prosecution by filing a criminal complaint in the state court, plaintiff has made no showing that defendants purposefully intended to discriminate against him, and no showing that they acted with a purpose of depriving him of equal protection of the laws or equal privileges and immunities under the law. *See Krikmanis* v. *Montgomery*, Civil No. 70-188-M (D. Mass., filed Oct. 13, 1970). Mere failure of the defendants to institute criminal proceedings against third persons is no basis for a finding of denial of equal protection. *Moss* v. *Hornig*, 314 F.2d 89 (2d Cir. 1963).

Finally, the amended complaint fails to allege the necessary elements under either clauses (2) or (3) of section 1985. There are no allegations of fact to show the existence, execution, furtherance or promotion of a conspiracy. There are only vague and general assertions of a conclusionary character of a conspiracy and results thereof, unsupported by factual averments. These are not enough to state a cause of action based on conspiracy. *Krikmanis* v.

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[2] 42 U.S.C. § 1981 provides, in pertinent part, that:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens . . . .

Montgomery, Civil No. 70-188-M (D. Mass., filed Oct. 13, 1970). Nor has plaintiff alleged that defendants purposely intended to discriminate against him, as required by section 1985(3). *Huey* v. *Barloga*, 277 F. Supp. 864 (D.C. Ill. 1967). Discriminatory purpose is not presumed under this statute. *Joyce* v. *Ferrazzi*, 323 F.2d 931 (1st Cir. 1963). Furthermore, there are no allegations of fact to show any intent on the part of the defendants to deny plaintiff the equal protection of the laws or to injure him or his property for attempting to enforce the right of another to equal protection, as required by section 1985(2).

Accordingly, the amended complaint is hereby dismissed for failure to state a claim upon which relief can be granted.

(s) FRANK J. MURRAY
FRANK J. MURRAY
United States District Judge

Dated November 29, 1971

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Misc. No. 559.

GEORGS KRIKMANIS,
PLAINTIFF, APPELLANT,

v.

VINCENT A. MANNERING, CLERK, ET AL.,
DEFENDANTS, APPELLEES.

MEMORANDUM AND ORDER

Entered: January 26, 1972

Plaintiff seeks leave to proceed in forma pauperis. We have examined the record in this case and can find no coherent issues of substance in the amended complaint, which was dismissed by the court below.

The motion for leave to appeal in forma pauperis is denied.

By the Court:
(s) DANA H. GALLUP
DANA H. GALLUP
Clerk

Enter:
(s) McENTEE J
McENTEE J

[Cert. cc: Clerk, U.S.D.C., Mass. cc: Mr. Krikmanis and Quinn.]

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Misc. No. 559.

GEORGS KRIKMANIS,
PLAINTIFF, APPELLANT,
v.
VINCENT A. MANNERING, CLERK, ET AL.,
DEFENDANTS, APPELLEES.

[U.S.D.C. Mass., Civil No. 70-853-M]

MEMORANDUM AND ORDER
ORDER OF COURT

Entered: February 16, 1972

Plaintiff's petition for rehearing filed on February 1, 1972, is denied.

By the Court:
(s) DANA H. GALLUP
DANA H. GALLUP
Clerk

Enter:
(s) McENTEE J
McENTEE J